

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:OHI:CIN:TL-N-1439-00

JEKagy

date:

to: Chief, Examination Division, Ohio District
Attn: International Examiner [REDACTED]

from: Assistant District Counsel, Ohio District, Cincinnati

subject:

[REDACTED]
Implied Guarantee

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This memorandum responds to your inquiry of March 7, 2000 regarding the subject referenced above. More specifically, you asked whether we concurred in your assessment that the excerpt from the Secured Line of Credit document established that the obligor's parent, [REDACTED], had guaranteed the repayment of the obligation arising under the line of credit, as the term guarantee was defined in section 163(j)(6)(D)(iii).

ISSUE:

Whether the Secured Line of Credit document supplied establishes a guarantee of an indebtedness pursuant to section 163(j)(6)(D)(iii).

CONCLUSION:

From the limited facts before us, we cannot agree that the obligation arising under the line of credit has been guaranteed.

FACTS:

██████████ is a United States company located in the ██████████ area. During the years at issue, ██████████ was indirectly owned by ██████████, a French corporation. During ██████████, ██████████ obtained a \$██████████ secured line of credit from ██████████ and ██████████. The stated purpose for the line of credit was to provide the borrower with a supply of working capital. The only item questioned by the agent is whether the "Events of Default" section of the Secured Line of Credit document is properly interpreted as a guarantee of the indebtedness arising under the line of credit as the term "guarantee" is used by section 163(j)(6)(D)(iii).

The Default section of the line of credit defines an "event of default" to include, *inter alia*, the cessation of ██████████'s ownership and control of ██████████% of the voting and capital stock of ██████████. Upon the occurrence of any one or more of the defined events of default, the lenders became vested with the right to declare any loans or disbursements existing under the line of credit to be due and collectible.

ANALYSIS:

For purposes of this issue, the term "guarantee" is defined at section 163(j)(6)(D)(iii) as follows:

Except as provided in regulations, the term "guarantee" includes any arrangement under which a person (directly or indirectly through an entity or otherwise) assures, on a conditional or unconditional basis, the payment of another person's obligation under any indebtedness.

No regulations have been proposed regarding the term "guarantee." See Treas. Reg. § 1.163(j)-9 [Reserved]. Thus, there are no exceptions to the definition of the term "guarantee" employed by section 163(j)(6)(D)(iii).

At issue is whether the language of the line of credit's Default section constitutes another person's direct or indirect assurance, on a conditional or unconditional basis, of the payment of [REDACTED]'s obligation under the line of credit. We believe that the language of the line of credit, standing alone, is insufficient to qualify as a "guarantee" under section 163.

While the language implies that the line of credit was offered, in part, because of the existing relationship between [REDACTED] and [REDACTED] and that the lender was unwilling to maintain the extension of the line of credit absent [REDACTED]'s continued ownership of [REDACTED], those implications alone do not amount to [REDACTED]'s assurance, either conditionally or unconditionally, that it would satisfy [REDACTED]'s obligations under the line of credit. There simply is no set of facts currently known to exist under which [REDACTED] becomes obligated to repay the debts of [REDACTED].

We understand that you have reviewed all other relevant documents and have located no other contractual language, written or oral communications between the parties or actions on behalf of the parties, which support the existence of an obligation on the part of [REDACTED] to pay [REDACTED]'s obligations. As a result of the foregoing, we are unable to support your conclusion that the language in the Secured Line of Credit amounts to a guarantee as that term is used by section 163(j)(6)(D)(iii).

If there are other documents which you wish for us to review in conjunction with the line of credit document, or if there are other activities which you believe support your conclusion, we are willing to review those further documents and to reconsider the opinion offered by this memorandum.

MATTHEW J. FRITZ
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By: _____

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